

STATE OF MICHIGAN  
COURT OF APPEALS

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UNPUBLISHED

August 20, 2013

In the Matter of HARVEY, Minors.

No. 313746

Oakland Circuit Court

Family Division

LC No. 12-796636-NA

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Before: K. F. KELLY, P.J., and SHAPIRO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent-father R. Harvey appeals as of right from a circuit court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(b)(i) (parent physically injured or sexually abused child or sibling of child), (g) (failure to provide proper care or custody), (j) (reasonable likelihood of harm if child returned), and (k)(ii) (parent abused child or child's sibling via criminal sexual conduct including penetration or attempted penetration). We affirm because the trial court did not err in its determination of the minor children's best interests.

Petitioner sought termination of respondent's parental rights to his children after it was discovered that he had been sexually abusing his daughter over a four-year period. Respondent pleaded no contest to the allegations against him and presented no evidence or argument regarding the children's best interests, asking only that he be allowed "a last visit" with his son. On appeal, respondent does not challenge the trial court's findings regarding the statutory grounds for termination. He argues only that the trial court erred in finding that termination of his parental rights was in the children's best interests.

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). We review the trial court's decision regarding a child's best interests for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); MCR 3.977(K).

In deciding whether termination is in a child's best interests, the court may consider the child's bond to the parent, *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004), the parent's parenting ability, *In re Jones*, 286 Mich App 126, 129-130; 777 NW2d 728 (2009), the child's safety and well-being, *In re VanDalen*, 293 Mich App 120, 142; 809 NW2d 412 (2011), and the

child's "need for permanency, stability, and finality." *In re Gillespie*, 197 Mich App 440, 446-447; 496 NW2d 309 (1992).

An order of termination "may not be entered unless the court makes findings of fact, states its conclusions of law, and includes the statutory basis for the order." MCR 3.977(I)(3). "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). While the trial court's factual findings were limited, that can be attributed to the fact that respondent presented no evidence or argument at the dispositional hearing, virtually conceding without expressly agreeing that his parental rights should be terminated. In any event, it appears that the trial court was aware of the issues in the case and correctly applied the law and thus remand for additional findings is not necessary. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). It is clear from the trial court's findings that it relied on information in a psychological evaluation report prepared for two of the children as the basis for its decision. That information indicated that termination was in the two girls' best interests because they were both abused by respondent, they remained at a high risk of abuse, and they did not want to see respondent again. In addition, the 11-year-old had suffered serious psychological trauma by respondent's prolonged abuse and threats against disclosure.

The parties did not present any evidence specifically regarding respondent's son's best interests, but the trial court was left with a record which showed that respondent had sexually abused the boy's siblings, and the psychological evaluation report recommended that respondent not have contact with any of his children. Given the issues in the case and the recommendations in the psychological evaluation report, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests.

We reject respondent's argument that reversal is required because the trial court did not separately address each child's best interests. This Court held in *In re Olive/Metts*, 297 Mich App 35, 42; 823 NW2d 144 (2012), that the trial court must "decide the best interests of each child individually." In that case, however, it was necessary to address each child's interests separately because the children's circumstances differed and two of the children had been placed with relatives, which is an express factor to be considered. In this case, by contrast, the children were similarly situated. All were residing at home with their mother and all were at risk of harm or abuse by respondent due to respondent's inability to control his aberrant sexual impulses and his disregard for the consequences of his actions. Thus, the trial court's failure to separately address each child's best interests does not require reversal.

We also reject respondent's argument that termination was premature because respondent had not also obtained a psychological evaluation. Petitioner expressly requested that respondent be referred for an evaluation and respondent objected, not wanting to submit to an evaluation until after his criminal case concluded. When the parties returned for the dispositional hearing, respondent knew that his criminal proceeding had been adjourned, but he did not object to proceeding without the evaluation or request an adjournment. "Error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence." *Phinney v Perlmutter*, 222 Mich App 513, 558; 564 NW2d 532 (1997). In any event, respondent contends that a psychological evaluation should have been obtained so the trial court could determine whether

he might benefit from reunification services. However, in light of the undisputed fact that respondent sexually abused his daughter, he was not entitled to reunification services. MCL 712A.19a(2)(a); MCL 722.638(1)(a)(ii) and (2).

Affirmed.

/s/ Kirsten Frank Kelly  
/s/ Douglas B. Shapiro  
/s/ Amy Ronayne Krause